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Decisions of
Mr. Speaker Bijoy Kumar Banerjee
from 8th March, 1967 to 19th February, 1968

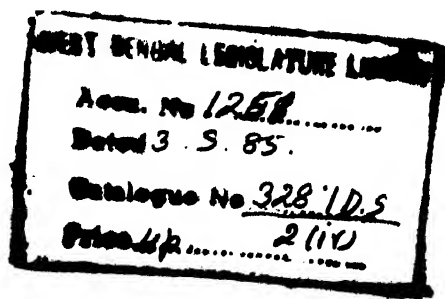


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ADJOURNMENT MOTION

Re-reading on the plea that it was not read in full by the Speaker—not allowed

On 29th March, 1967, one Member (Shri Panchanan Singha Roy) wanted to re-read his adjournment motion which was not read by the Speaker in full. But the Speaker did not permit the Member to do so saying that usually notices are read here and not the other statement of facts.

(Page No. 407, Vol. XLIV, dated 29th March, 1967)

DISSOLUTION OF MINISTRY

Dissolution of a ministry followed by the appointment of another ministry and the summoning of the House on the advice of the new ministry being effected behind the back of the House is unconstitutional and invalid.

The full text of the ruling delivered by the Speaker on 29th November, 1967, is given in the Appendix.

(Progs. 29th November, 1967, Vol. XLVI, page 1)

DEBATE

Unauthenticated papers containing allegations against a minister cannot be accepted

During the discussion on demand for grants, on 21st July, 1967, one Member (Dr. Ranjit Ghosh Chowdhury) read some papers containing allegations. Another Member (Shri Sambhu Charan Ghosh) raised a point of order as to whether the papers read by the Member, which were not authorised documents should have been read in the House. The Speaker observed, *inter alia*, as follows :

“As I saw the papers, I could not accept them as they were not signed by anybody. They were only typed copies purported to be a report of some resolutions passed. Such papers without signature, without verification, without attestation cannot be allowed to go as part of the records of this House. Secondly the honourable Member who delivered the speech took upon himself the fullest responsibility for the statement made by him. It is for the Hon'ble Minister, by way of a personal explanation, to deny it. He can do it now, or on a subsequent day after going through the records.”

(Progs. 21st July, 1967, Vol. XLY, No. 2 page 789)

PRIVILEGE

Consent withheld as no particulars of alleged misrepresentation of the speech were indicated

On 17th March, 1967, Mr. Speaker received a notice from a Member (Shri Hara Prasad Chatterjee) along with a copy of the "Amrita Bazar Patrika", dated 16th March, 1967 seeking to raise a question of privilege regarding intentional misrepresentation of the Finance Minister's speech in the House delivered on 15th March, 1967. The Speaker ruled as follows :

"As no particulars of the alleged misrepresentation have been indicated I withhold consent to the raising of the matter."

(Prog. 17th March, 1967, Vol. XLIV, page 210)

QUESTION

The Speaker cannot force a Minister to answer a question in the way a Member likes him to do

Being dissatisfied with the answer given by the Chief Minister (Shri Ajoy Kumar Mukherji) to a question on "Gherao" a Member (Shri Samsuddin Ahmed) wanted the protection of the Speaker and requested him to pull up the Minister concerned to give relevant answer to his question. Thereupon the Speaker observed as follows :

"The Chief Minister has answered it by saying that it is a question of opinion. That is his answer. How can I force a Minister to answer in the way you like him to do ? It is my duty as a Speaker to request the Hon'ble Minister to reply. He has replied in a way best known to him. I cannot do anything more."

(Progs. 7th April, 1967, Vol. XLIV, page 809)

UNPARLIAMENTARY EXPRESSIONS

Pakistan's Spy

The use of expression "Pakistan's Spy" referring to a Member is not permissible.

(Progs. 18th July, 1967, Vol. XLV, No. 2, page 527)

Halla

The term "halla" should not be used with reference to Members.

(Progs. 7th April, 1967, Vol. XLIV, page 807)

Pauper

The word "pauper" used with reference to a Member is a reflection on the honourable Member and should be withdrawn.

(Progs. 13th July, 1967, Vol. XLV, No. 2, page 243)

APPENDIX

Rolling delivered by Shri Bijoy Kumar Banerjee, Speaker, West Bengal Legislative Assembly, on 29th November 1967

Mr. Speaker : Honourable Members, this House meets under extraordinary circumstances. I am prima facie satisfied that the dissolution of the Ministry headed by Shri Ajoy Kumar Mukherjee followed by the appointment of Dr. P. C. Ghose as Chief Minister and the summoning of this House at his advice is unconstitutional and invalid since it has been effected behind the back of this House. Pending a full and proper examination of the matter in exercise of powers vested in me under rule 15 of the Rules of Procedure of this Assembly, I adjourn the House sine die.

The House will remember that when it was prorogued on August 1, the Council of Ministers was headed by the Chief Minister Shri Ajoy Kumar Mukherjee. This was the Council of Ministers that was collectively responsible to this House in terms of article 164(2) of the Constitution.

As I understand the constitutional position, the only authority competent to decide whether or not a Council of Ministers should continue in office is this House. An adverse vote against the Council of Ministers in this House necessarily leads to a position when that particular Council of Ministers no longer enjoys the confidence of this House and its continuance in office would be violation of article 164(2) of the Constitution.

I am happy to state that this understanding of mine is supported by high precedent. In March, 1945, the then Government of Bengal was defeated in a vote taken on the demand for a grant in respect of Agriculture. The question arose as to the constitutional consequence of such a defeat. At that time my predecessor in office Shri Nausher Ali put the essence of the matter in clear terms. To quote him :

“Sir Nazimuddin (the then Chief Minister) said yesterday that he would treat this as a snap division and not a censure. I am afraid the constitutional position has not been properly conceived. The Ministry is the creature of the House ; this House can make and unmake the Ministry and the Governor is but the registering authority of the House. Any other course, I am afraid, would strike at the very root of democracy.”

No doubt the circumstances facing Shri Nausher Ali were different. But the essence of the matter, namely, that this House is the supreme authority in regard to making and unmaking Ministers, is the same. And this statement came from the lips of a presiding officer of this House when India was not free. Today when the sovereign Indian people have given unto themselves a Constitution, surely the authority of this House has increased and not diminished.

This is why I find it extremely difficult to recognise Dr. Prafulla Chandra Ghose as Chief Minister and his colleagues Shri Harendra Nath Mazumdar and Dr. Amir Ali Molla as members of the Council of Ministers. Both the text of the articles of the Constitution and the president quoted above recognise no discretion in the Governor in respect of the appointment of the Council of Ministers. He is merely a registering authority to use the expression of my predecessor ; an authority whose constitutional duty is to recognise and implement the decisions of this House.

To an extent I have attempted to examine the method by which behind the back of this August Assembly the Council of Ministers responsible to it has been removed. It would appear that on 21st November, 1967, the Governor of this State issued an order under article 164(1) whereby he proposed to "order that the Chief Minister Shri Ajoy Kumar Mukherjee shall cease to hold office with immediate effect". He further "directed that the Council of Ministers headed by him stands dissolved and other Ministers cease to hold office".

A careful reading of article 164(1) does not disclose the vesting of any such power of dissolution of a Council of Ministers by a Governor. Hence I do not find any legal basis for the act of dissolution.

I may also mention that the argument has been advanced that the words in article 164(1) "the Ministers shall hold office during the pleasure of the Governor" vest in the Governor the power to dismiss a Ministry. But this argument is without merit. For the same expression "pleasure of the Governor" finds place in article 165(3) with regard to the appointment of the Advocate-General. And none will question the appointment and dismissal of the Advocate-General is not within the Governor's discretion but has to be done on the advice of the Council of Ministers.

On a *prima facie* examination of the constitutional question involved, I find it impossible to recognise as legal, valid and constitutional the dissolution of the Council of Ministers, headed by Shri Ajoy Kumar Mukherjee.

It follows then that the appointment of the Council of Ministers headed by Dr. P. C. Ghose as Chief Minister is invalid and unconstitutional.

The order by which the Council of Ministers headed by Shri Ajoy Kumar Mukherjee was dissolved is dated 21st November, 1967. This Assembly, however, has been summoned under an order of the Governor which was issued only on 22nd November, 1967. In view of this I am unable to appreciate how this session of this Assembly can have any constitutional or legal validity. For if the order of the Governor of 21st November, 1967, is illegal and unconstitutional, evidently the Council of Ministers headed by Shri Ajoy Kumar Mukherjee not only continues in office but alone is competent to advise the Governor of the manner in which he is to exercise his powers under article 174(1), namely, the power to summon this Assembly. And only an Assembly summoned by the Governor acting under such advice would be validly and properly summoned. I must therefore, confess my grave doubts about the validity of this session of the Assembly.

Honourable Members will appreciate that the Constitution and the Rules of Procedure charge me with the high responsibility of protecting the dignity and privileges of this August Assembly. And I would be failing in my duty if I did not uphold the rights and powers of this House in the face of attempts to infringe and restrict such rights.

The matters in issue are of the highest constitutional importance. It is my regret that when an attempt was made to refer them for the opinion of the Supreme Court under article 143 such attempt was frustrated. It is beyond dispute that the issues go to the very root of democracy. It is obvious, therefore, that if I am to find out how exactly I should act so as to preserve and protect the privileges of this House I should need more time and then only give a considered ruling on the grave issues at stake.

This is why in exercise of my powers under rule 15, I have adjourned the House *sine die*.

